100TH CONGRESS
2d Session

SENATE

REPORT
100-334

AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1989 FOR INTELLIGENCE ACTIVITIES OF THE UNITED STATES GOVERNMENT, THE INTELLIGENCE COMMUNITY STAFF, THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM [CIARDS], AND FOR OTHER PURPOSES

MAY 11 (legislative day, MAY 9), 1988.—Ordered to be printed

Mr. BOREN, from the Select Committee on Intelligence, submitted the following

REPORT

[To accompany S. 2366]

The Select Committee on Intelligence, having considered the original bill (S. 2366) authorizing appropriations for fiscal year 1989 for intelligence activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

This bill would:

(1) Authorize appropriations for fiscal year 1989 for (a) intelligence activities of the United States, (b) the Intelligence Community Staff, and (c) the other intelligence activities of the United States Government;

(2) Authorize the personnel ceilings as of September 30, 1989 for (a) the Central Intelligence Agency, (b) the Intelligence Community Staff, and (c) the other intelligence activities of the United States Government;

(3) Authorize the Director of Central Intelligence to make certain personnel ceiling adjustments when necessary to the performance of important intelligence functions; and

(4) Make several legislative changes designed to enhance intelligence and counterintelligence capabilities and to promote more effective and efficient conduct of intelligence and counterintelligence.

S423-3

OVERALL SUMMARY OF COMMITTEE ACTION

[In millions of dollars]

	Fiscal year—		Committee recommends
	1988	1989 request	
Intelligence activities	(1)	(1)	(1)
IC staff	21.9	23.7	23.7
CIARDS	144.5	144.5	144.5

[1] Classified.

THE CLASSIFIED SUPPLEMENT TO THE COMMITTEE REPORT

The classified nature of U.S. intelligence activities prevents the Committee from disclosing the details of its budgetary recommendations in this Report.

The Committee has prepared a classified supplement to the Report, which describes the full scope and intent of its action. The Committee intends that the classified supplement, although not available to the public, will have the full force of a Senate Report, and that the Intelligence Community will fully comply with the limitations, guidelines, directions, and recommendations contained therein.

The classified supplement to the Committee Report is available for review by any Member of the Senate, subject to the provisions of Senate Resolution 400 of the 94th Congress.

SCOPE OF COMMITTEE REVIEW

The Committee conducted a detailed review of the Intelligence Community's budget request for Fiscal Year 1989. This review included more than 30 hours of testimony from the principal program managers for the U.S. Intelligence Community, including the Director and Deputy Director of Central Intelligence, the Director, National Security Agency, the Director, Defense Intelligence Agency, the Director of the Federal Bureau of Investigation, and various senior intelligence officials of the Department of Defense.

In addition, the review included examination of over 3,000 pages of budget justification documents, as well as a review of written answers submitted by such officials in response to questions for the Committee record.

The committee's analysis of this year's budget request also benefited from several of the Committee's other inquiries conducted during the year. For example, the voluminous hearings conducted by the Committee into the Intelligence Community's capability to verify the Intermediate Range Nuclear Forces [INF] Treaty provided a vast amount of information which had relevance to the Fiscal Year 1989 budget request in both the intelligence and counterintelligence areas. Similarly, the Committee's regular reviews of covert actions produced information relevant to the Committee's consideration of the budget, as did its separate inquiries into security at U.S. Embassies and certain aspects of DOD intelligence activities, which occurred during the preceding year.

The Committee also notes that during the preceding year it has established its own independent audit capability. While formed too

late to produce reports to affect this year's budget process, it can be expected to impact this process in the years to come.

COMMITTEE FINDINGS AND RECOMMENDATIONS

In previous years, the Committee has reported its judgment that intelligence activities must be assigned a very high priority in terms of overall national security investment. Indeed, the information which these activities provide to the United States can determine what investments should be made in other areas, permitting a better assessment both of need and priority. Intelligence also plays a key role in terms of the development of U.S. policy towards other countries. In short, intelligence must be viewed as an essential supporting partner of U.S. defense programs and foreign policy objectives. Without an adequate intelligence capability, the United States stands upon much more tenuous ground.

It is with some concern, therefore, that the Committee views any significant reductions in such capacity. While the Intelligence Community, in times of fiscal constraint, must expect to "tighten its belt," as other segments of the Government are being asked to do, the Committee believes that the Intelligence Community places such a crucial role in the development and execution of U.S. capabilities and objectives, that caution should be exercised in levying future cuts of a substantial nature. The ultimate result could be to increase costs in other functional areas by denying the information which would allow them to be performed more efficiently.

The Committee has carefully reviewed current U.S. intelligence capabilities against the broad range of requirements faced by the United States for detailed, timely, and accurate intelligence support. It believes that the recommendations it has made for Fiscal Year 1989, as set forth in the classified supplement to this Report, will satisfy these needs.

CONGRESSIONAL OVERSIGHT OF INTELLIGENCE ACTIVITIES

Although not fully reflected in the Fiscal Year 1989 Intelligence Authorization, the Committee devoted substantial effort during the preceding year to the consideration of means to strengthen existing intelligence oversight arrangements in the wake of the so-called Iran-Contra affair.

In January, 1988, after extensive hearings, the Committee reported out S. 1721, a comprehensive revision of the Intelligence Oversight Act of 1980. The bill would make significant changes, implementing in part the recommendations of the Iran-Contra Committee, with respect to the approval and reporting of covert actions by the President. Having passed the Senate by a vote of 71–19 on March 15, 1988, the bill now awaits action by the House of Representatives.

An issue also raised by the Iran-Contra affair was the effectiveness of the CIA Inspector General in identifying and investigating alleged misconduct by CIA employees. A member of the Committee, Senator Specter, introduced legislation which, among other things, would create an independent Inspector General, appointed by the President and confirmed by the Senate. Several hearings were held on this proposal, which largely provided the impetus for

the Committee's approval of section 504, described in detail below. This section, if enacted, would require the DCI to make certain reports to the intelligence committees concerning the activities of the Inspector General.

Also consistent with its efforts to improve the quality of oversight, the Committee established its own independent audit capabilty, as mentioned above.

BENEFITS FOR CERTAIN FORMER SPOUSES OF CIA EMPLOYEES

In the Intelligence Authorization Act for Fiscal Year 1988, Section 225 was added to Central Intelligence Agency Retirement Act of 1964 for Certain Employees. This section provided retirement benefits to the former spouses of certain CIA employees who were married to such employees before November 15, 1982, the effective date of the Central Intelligence Agency Spouses' Retirement Equity Act of 1982. This provision also required the Director of CIA to issue regulations to implement these provisions, and to attempt to notify former spouses who may be entitled to the benefits provided. Benefits were not to be payable unless written application had been made to CIA within thirty months of the effective date of the amendment.

Since this provision was enacted two problems have been brought to the attention of the Committee: one involving the pace of implementation, and the other a problem with a limitation on such benefits contained in the provision.

With respect to implementation of the provision, the Committee is advised that there is a considerable backlog of applications pending at CIA without sufficient staff personnel to handle them. We are also advised that the notice to former spouses who are entitled to apply for such benefits has yet to be sent to individuals (although notices have been published in newspapers). In either cases, the delay in implementing this provision may be resulting in benefits being denied former spouses in dire need. Accordingly, the Committee directs the Director of the Central Intelligence Agency to provide it by July 1, 1988, with a report setting forth the status of implementation of this provision, identifying problem areas, and providing a timetable for completion of the implementation of this program.

The Committee has also been advised that one of the limitations on eligibility for benefits contained in section 225, namely, the provision that former spouses who remarry before the age of 55 are not entitled to such benefits, may be causing hardships in some cases. Where remarriage would not result in improving the financial condition of such spouses, the loss of benefits provides a disincentive to marriage. Some former spouses who would have been entitled to such benefits remarried before section 225 was enacted, and therefore had no opportunity to consider the effect of this action upon their eligibility for retirement benefits.

Notwithstanding these concerns, the Committee recognizes that this type of limitation on benefits to former spouses exists in all of the benefit programs available to CIA employees. Indeed, a similar limitation on benefits applies in the case of spouses who have remained married to such employees. If the limitation were to be

eliminated for one category of benefit, it should seemingly be eliminated for all categories. The resource and policy impact of such action has not, however, been adequately evaluated. Accordingly, before considering further action in this regard, the Committee directs the Director of Central Intelligence to submit a report to the Committee by October 1, 1988, which analyzes the impact, in terms of both policy and resource requirements, of eliminating the "remarriage" limitations in each of CIA's benefit programs. This Report should also include a comparative analysis of CIA retirement programs with those of the military, civil service, and foreign service insofar as such remarriage restrictions are concerned.

THE ROLE OF INTELLIGENCE IN EXPORT CONTROLS

The Committee has been overseeing the Intelligence Community's role in providing information and analysis to U.S. policymakers on cases of suspected Cocom violations. In particular, the Committee has begun to examine the role of the Intelligence Community in the case of Toshiba Machine's illegal sales of Cocom-controlled equipment to the Soviet Union and of alleged additional illegal sales by the parent company.

This examination will include a review by the Committee of the Intelligence Community's judgments regarding Toshiba's involvement in illegal diversions of technology, the Community's contributions to Congressional consideration of sanctions on Toshiba, and whether intelligence analysts were pressured to modify their findings. The Committee's examination will also include the Intelligence Community's estimates of the effectiveness of Japan's strategic export control system; how it compares with the British, French, German, Italian, and other industrial allies' systems; and whether the Japanese government is likely to strengthen it in response to various types of U.S. pressure on the Japanese government and trade sanctions against Toshiba.

One purpose of these inquiries is to ensure that U.S. intelligence support to policymakers involved in managing multilateral export controls is both objective and timely. Another purpose is to assess alternative courses of action that may be considered by other Committees, or by the Senate as a whole, in dealing with cases of technology diversion to Communist countries.

The Committee is not recommending any new statutory measures at this time, however, the inquiry now underway may lead to such measures being developed, to include recommendations for appropriate remedies to be pursued, or sanctions to be imposed, in current cases of known or suspected violations.

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

Title I—Intelligence activities

Section 101(a) lists the departments, agencies, and other elements of the United States Government whose intelligence activities are authorized for appropriations by the Act during Fiscal Year 1989.

Section 101(b) provides that in addition to the monies otherwise authorized for appropriations (as set forth in the classified Schedule of Authorizations referred to in section 102), there is authorized

for appropriation to the Federal Bureau of Investigation for Fiscal Year 1989, the amount of $15,100,000 which may be expended solely for carrying out its functions relative to the implementation of the Intermediate Range Nuclear Forces Treaty. This sum is being authorized in anticipation that such treaty will be ratified and become effective prior to the beginning of Fiscal Year 1989.

Section 102 makes clear that details of the amounts authorized to be appropriated for intelligence activities and personnel ceilings covered under this title for Fiscal Year 1989 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section.

Section 103 authorizes the Director of Central Intelligence in Fiscal Year 1989 to expand the personnel ceilings applicable to the components of the Intelligence Community under Sections 101 and 102 by an amount not to exceed two percent of the total of the ceilings applicable under these sections. The Director may exercise this authority only when necessary to the performance of important intelligence functions or to the maintenance of a stable personnel force, and any exercise of this authority must be reported to the two intelligence committees of the Congress.

Title II—Intelligence community staff

Section 201 authorizes appropriations in the amount of $23,745,000 for the staffing and administration of the Intelligence Community Staff for Fiscal Year 1989.

Section 202 provides details concerning the number and composition of Inelligence Community Staff personnel.

Subsection (a) authorizes 244 full-time personnel as of the end of Fiscal Year 1989, and provides that personnel of the Intelligence Community Staff may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (b) requires that detailed employees be selected so as to provide appropriate representation from the various departments and agencies engaged in intelligence activities.

Subsection (c) requires that personnel be detailed on a reimbursable basis except for temporary situations.

Section 203 provides that the Director of Central Intelligence shall utilize existing statutory authority to manage the activities and pay the personnel of the Intelligence Community Staff. In the case of detailed personnel, it is understood that the authority of the Director of Central Intelligence to discharge personnel extends only to discharge from service at the Intelligence Community Staff and not from federal employment or military service.

Title III—Central Intelligence Agency retirement and disability system

Section 301 authorizes Fiscal Year 1989 appropriations in the amount of $144,500,000 for the Central Intelligence Agency Retirement and Disability Fund.

Title IV—General provisions

Section 401 provides that the authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct

of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

Section 402 provides advance authorization for such additional appropriations as may be necessary to pay for increases in Federal employee compensation and benefits which may be subsequently be authorized by law. This section would obviate the need for separate authorizations for such matters for Fiscal Year 1989.

Title V—Central Intelligence Agency administrative provisions

Section 501 provides the Director of Central Intelligence with one-time authority to provide appropriate redress to a former employee of the Central Intelligence Agency if he determines that such employee's career was adversely and unfairly affected actions of the Agency.

Subsection (a) limits such authority to Fiscal Year 1989, and to a circumstance where the Director of Central Intelligence finds that a former employee of the Central Intelligence Agency has unfairly had his career with the Agency adversely affected as a result of allegations concerning the loyalty to the United States of such former employee. If the Director determines such situation exists, he is authorized to grant monetary and such other relief, including reinstatement and promotion, as he considers appropriate in the interests of fairness.

Subsection (b) provides that such action by the Director is not reviewable in any other forum or in any court.

Subsection (c) provides that any monetary relief which is authorized shall be paid only from appropriated funds otherwise available for this purpose.

Subsection (d) requires the Director of Central Intelligence to provide a report prior to exercising the authority given under this section to both intelligence committees.

Section 502 is intended to allow a very small class of Central Intelligence Agency employees a second opportunity to elect coverage under the new Federal Employees Retirement System [FERS]. These are employees who had previously elected to remain under the Civil Service Retirement and Disability System [CSRDS] rather than shift to FERS, but who are subsequently selected for participation in the Central Intelligence Retirement and Disability System [CIARDS]. For a few such employees, FERS will be the more advantageous retirement system.

More specifically, during the period set aside by law for federal employees hired before 31 December 1983 to elect to remain in CSRDS or enter the new FERS system (July 1, 1987 through December 31, 1987), CIA employees who were in CSRDS were given the option of changing retirement systems.

These same employees, however, continue to be eligible for designation into Central Intelligence Agency Retirement and Disability System [CIARDS], should they meet certain requirements for tenure and service with the Agency. (Both CSRDS and CIARDS are now closed to Agency employees hired after December 31, 1983.)

A very small percentage of those designated for CIARDS will, for various reasons, find it less advantageous a retirement system than FERS, and yet will be precluded from making a change because of

the irrevocable election made to remain in CSRDS during the previous election period (July 1, 1987 through December 31, 1987).

To remedy this, section 502 would allow a second election opportunity to participants in CIARDS designated since the first election period, i.e. since December 31, 1987. This election period would be for six months, beginning on the day of enactment of this Act, or their designation into CIARDS, whichever came first. This is similar to existing provisions in the FERS Act which apply to re-employed federal employees, previously under CSRDS, who are given an additional six-month period when re-employed, to change to FERS. The effective date of the election under section 502 would also be the first pay period after the date of election, similar to the provisions of FERS. This election would also be irrevocable.

This election is limited to joining FERS. It is not intended to permit any employee already in CIARDS who joined FERS in the original election period to transfer from FERS to CSRDS or CIARDS.

The rationale for this provision is to permit CIA employees who were eligible for but not participants in CIARDS at the time they were required to choose between CSRDS and FERS, to make a further informed election once designated for CIARDS.

Section 503 amends subsection 303a of the National Security Act of 1947 to permit the Director of Central Intelligence to compensate retired military officers who agree to serve as members of advisory committees to the DCI. This amendment is necessary due to a provision in subsection 303a which precludes compensation for "persons holding other offices or positions under the United States for which they receive compensation." Retired military officers are deemed to fall within this category.

This provision would permit the DCI to compensate such officers provided they hold no *other* office or position under the United States for which they receive compensation. This is consistent, in fact, with the policy in effect at the Department of Defense, which compensates retired military officers serving on its advisory committees on a case-by-case determination.

The retired military officers affected by this provision would continue to be subject to the provisions of the Dual Compensation Act, which places limits upon the amount of additional compensation retired military can receive from the United States Government without having their retirement pay reduced. Generally, the amount of additional compensation received by retired military officers serving on DCI advisory committees will not be sufficient in and of itself to reduce the retirement pay of those affected.

The Committee believes that retired military officers serving on DCI advisory committees should be compensated in the same manner as such officers serving on DoD advisory committees.

Section 504 amends the Central Intelligence Act of 1949 to add a new subsection, imposing certain duties upon the Director of Central Intelligence to provide reports to both intelligence committees concerning the Inspector General at the Central Intelligence Agency. The requirements stem from the desire on the part of the Committee that the DCI keep it advised on an ongoing basis of the activities of the CIA Inspector General and of problems he may encounter in carrying out his functions.

Subsection (a) requires a report to be made to the committee whenever the DCI selects a new Inspector General. Such report must include certifications that the selection was not based upon the political affiliation of the selectee, and that he or she meets CIA security requirements and has had prior senior experience in the foreign intelligence field. Such experience need not have been at CIA, however. The DCI is required to describe the professional qualifications of the person selected, which the Committee believes should be in accounting, law, financial analysis, management analysis, public administration or other fields directly related to the functions of the Inspector General.

Subsection (b) requires the Director of Central Intelligence to advise the committees whenever he may remove an Inspector General from office, of the basis for such action. This requirement is not intended to permit the committees an opportunity to alter the decision, but only to evaluate whether an appropriate basis existed for the removal. It is not intended that the DCI advise the committees when an Inspector General at CIA leaves the position of his or her own volition.

Subsection (c) requires the Director of Central Intelligence to submit semiannual reports summarizing the activities of the Inspector General for the preceding six-month period, to include all audits, inspections, and investigations begun, in process, or accomplished by the Inspector General during the reporting period. Such reports must include certifications by the DCI that these activities have been conducted in accordance with accepted federal standards, and that the Inspector General has had the access he required to CIA personnel and information to carry out his job. The report should also identify any violations of law which may have been identified, as well as willful violations of CIA regulations. Evidence of serious fraud, waste and abuse should also be described. Finally, the report should describe the status of actions taken by the DCI during the reporting period in response to Inspector General recommendations.

Subsection (d) requires that the Director of Central Intelligence report any decision which he makes to prohibit the Inspector General from initiating, carrying out, or completing any audit, inspection, or investigation within the CIA to the two committees, within seven days of such decision. The Committee recognizes, in fact, that there may be circumstances where an audit, inspection, or investigation by the Inspector General at a particular time may hamper or prevent CIA from accomplishing certain functions. The DCI may properly act to delay or postpone an Inspector General actions under these circumstances. The Committee believes such a report will provide it an opportunity to ensure that such actions are not improperly blocked or terminated by a DCI.

Subsection (e) requires the Director of Central Intelligence to report any other decision he may make which substantially affects the ability of the Inspector General to carry out his duties and responsibilities. Such report must be accompanied by the comments of the Inspector General with respect to such decision and must be made to the committees within seven days of the decision. Examples of reportable actions might include denying the Inspector General or his staff access to documentary information held by the

CIA, denying permission to interview CIA personnel in furtherance of an authorized investigation or inquiry, or otherwise indirectly curtailing through administrative actions (e.g., denying travel orders or funding, by inordinate staff reductions) such investigations or inquiries. This provision is not, however, intended to require reports of routine administrative decisions made by the DCI as an agency head, directed at the CIA as a whole, with which the Inspector General may disagree, or which affect the Office of Inspector General but do not seriously impede the execution of its functions.

Title VI—FBI enhanced counterintelligence authorities

The Intelligence Authorization Act for fiscal year 1988 directed the FBI and Office of Personnel Management (OPM) to conduct a study of the problems being experienced by the FBI New York Field Division in recruiting and retaining qualified personnel. That study was completed in March, 1988, recommending to the Committee that an FBI–OPM demonstration project be authorized for a period a five years for the purpose of examining the effects of additional compensation on recruitment and retention of qualified personnel in the FBI New York Field Division.

Section 601 is intended to implement this recommendation. It requires that an FBI–OPM demonstration project be initiated within 90 days of enactment of the Act to continue for five years. Interim reports are required to be made to the President and the Congress on an annual basis.

Title VII—Department of Defense intelligence provisions

Section 701 amends section 421 of title 10, United States Code, to clarify the authority of the Secretary of Defense to take certain actions in relation to the implementation of cryptologic support arrangements with foreign governments.

Subsection (a) authorizes the Secretary of Defense to use funds appropriated for intelligence and communications purposes to pay for the expenses of such arrangements. This restates the authority contained in existing law to use funds "available to" the Secretary for such purposes.

Subsection (b) authorizes the Secretary of Defense to use funds which have not been appropriated, but which are made available to him as part of a cooperative cryptologic support arrangement by a foreign government, without regard to the provision of law which would otherwise relate to the use of United States Government funds, except for certain conditions imposed by this subsection. First, the Secretary may not use funds provided by a foreign partner for any purpose for which Congress had previously denied funding. Second, if the funds were generated as a result of a sale from U.S. inventories of equipment, they may only be used to purchase replacement items of the same or similar kind. If the Secretary does not use proceeds in this manner, it is contemplated that they would be returned to the United States Treasury. Third, the Secretary may not use any funds which are made available to him by foreign government partners for any purposes which would redound to the exclusive benefit of the United States. In other words, it is contemplated that any such funds which may become avail-

able to him in such manner shall be applied to the cooperative cryptologic support arrangement concerned.

Subsection (c) requires the Secretary of Defense to report any funds used under the authority of this section to the intelligence committees in accordance with title V of the National Security Act of 1947—the Intelligence Oversight Act of 1980—which, among other things, requires such procedures as may be necessary shall be instituted to carry out the provisions of the Act.

COMMITTEE ACTION

On April 28, 1988, the Select Committee on Intelligence approved the bill and ordered if favorably reported.

EVALUATION OF REGULATORY IMPACT

In accordance with Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee finds no regulatory impact will be incurred in implementing the provisions of this legislation.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of Section 12 of Rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

○